

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
INDUSTRIAL WINDOW CORP.,

Plaintiff,

- against -

FEDERAL INSURANCE COMPANY

Defendant.

-----X  
FEDERAL INSURANCE COMPANY

Third-Party Plaintiff,

- against -

BEYS GENERAL CONSTRUCTION CORP.,

Third-Party Defendant.

-----X  
BEYS GENERAL CONSTRUCTION CORP.,

Fourth-Party Plaintiff,

- against -

HILL INTERNATIONAL, INC.

Fourth-Party Defendant.

-----X

Fourth-Party Defendant, HILL INTERNATIONAL, INC., ("HILL"), respectfully alleges the following, by its attorneys, LePatner & Associates LLP, as and for its Answer to the Fourth-Party Complaint (the "Fourth-Party Complaint"):

1. Fourth-Party Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1" of the Fourth-Party Complaint.

Civ. No.: 07 CV 10959

**ANSWER TO**  
**FOURTH-PARTY**  
**COMPLAINT**

2. Fourth-Party Defendant denies each and every allegation contained in paragraph “2” of the Fourth-Party Complaint, except admits that Hill is a Delaware Corporation with its principle office in Marlton, New Jersey.

3. Fourth-Party Defendant admits the allegations contained in paragraph “3” of the Fourth-Party Complaint.

4. Fourth-Party Defendant admits the allegations contained in paragraph “4” of the Fourth-Party Complaint.

### **JURISDICTION**

5. Fourth-Party Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “5” of the Fourth-Party Complaint and respectfully refers all questions of law to the Court for judicial determination.

### **BACKGROUND**

6. Fourth-Party Defendant denies each and every allegation contained in paragraph “6” of the Fourth-Party Complaint, except admits that Hill entered into an agreement with the New York City Department of Design and Construction (“DDC”) (the “DDC/Hill Agreement”), and respectfully refers the Court to the DDC/Hill Agreement for an accurate and in context recitation of its contents.

7. Fourth-Party Defendant denies each and every allegation contained in paragraph “7” of the Fourth-Party Complaint in the form alleged, except admits that Hill entered into an agreement with the Beys General Construction Corp. (“Beys”) (the “Hill/Beys Agreement”), and respectfully refers the Court to the Hill/Beys Agreement for an accurate and in context recitation of its contents.

8. Fourth-Party Defendant admits the allegations contained in paragraph “8” of the Fourth-Party Complaint.

9. Fourth-Party Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “9” of the Fourth-Party Complaint.

10. Fourth-Party Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “10” of the Fourth-Party Complaint.

11. Fourth-Party Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “11” of the Fourth-Party Complaint and respectfully refers the Court to Exhibit “A” of the Fourth-Party Complaint for an accurate and in context recitation of its contents.

12. Fourth-Party Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “12” of the Fourth-Party Complaint and respectfully refers the Court to Exhibits “B,” and “C” of the Fourth-Party Complaint for an accurate and in context recitation of their contents.

13. Fourth-Party Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “13” of the Fourth-Party Complaint and respectfully refers the Court to Exhibit “D” of the Fourth-Party Complaint for an accurate and in context recitation of its contents.

**FIRST CLAIM FOR RELIEF BY BEYS AGAINST HILL**

14. Fourth-Party Defendant repeats and realleges their responses “1” through “13” of this Answer as though fully set forth at length herein.

15. Fourth-Party Defendant denies each and every allegation contained in paragraph “15” of the Fourth-Party Complaint.

16. Fourth-Party Defendant denies each and every allegation contained in paragraph “16” of the Fourth-Party Complaint.

17. Fourth-Party Defendant denies each and every allegation contained in paragraph “16” of the Fourth-Party Complaint.

**SECOND CLAIM FOR RELIEF BY BEYS AGAINST HILL**

18. Fourth-Party Defendant repeats and realleges their responses “1” through “17” of this Answer as though fully set forth at length herein.

19. Fourth-Party Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “19” of the Fourth-Party Complaint and respectfully refers the Court to Exhibit “A” of the Fourth-Party Complaint for an accurate and in context recitation of its contents.

20. Fourth-Party Defendant denies each and every allegation contained in paragraph “20” of the Fourth-Party Complaint.

**As and For a First Affirmative Defense**

21. The Fourth-Party Complaint fails to state a cause of action for which relief may be granted.

**As and For a Second Affirmative Defense**

22. Plaintiff failed to comply with the terms of the September 27, 2005 subcontract entered into between Beys and IWC the (“Beys/IWC Subcontract”).

**As and For a Third Affirmative Defense**

23. The work, labor and services allegedly supplied on the project known as Contract No. 20040018658 – CAPIS ID No. LM001SCHO- Schomburg Center for Research in Black Culture – General Construction – Contract for Renovations & Mechanical Equipment Upgrades

– Libraries Unit Requirements Contract (herein after “Project”) by Fourth-Party Plaintiff and/or Plaintiff (hereinafter collectively “Subcontractor Plaintiffs”), failed to conform to the requirements of the DDC/Hill Contract, the Hill/Beys Contract and/or Beys/IWC Contract (hereinafter collectively referred to as the “Contract Documents”).

**As and For a Fourth Affirmative Defense**

24. Fourth-Party Plaintiff, Third-Party Plaintiff and/or Plaintiff (hereinafter collectively the “Plaintiff Parties”) failed to mitigate their damages.

**As and For a Fifth Affirmative Defense**

25. Subcontractor Plaintiffs work, labor and services was performed in a defective and negligent manner.

**As and For a Sixth Affirmative Defense**

26. The Fourth-Party Complaint fails to state a cause of action for contractual indemnification.

**As and For a Seventh Affirmative Defense**

27. The individual Plaintiff Parties have failed to exhaust their remedies available to each under the terms of the Contract Documents.

**As and For a Eighth Affirmative Defense**

28. Fourth-Party Plaintiff’s dispute is subject to alternate dispute resolution as identified in Contract Documents.

**As and For a Ninth Affirmative Defense**

29. Any damages sustained by Plaintiff Parties, which Fourth-Party Defendant denies, were caused by the actions of Plaintiff Parties and/or their agents and employees, and Plaintiff Parties should not be compensated therefore.

**As and For a Tenth Affirmative Defense**

30. Any damages sustained by Fourth-Party Plaintiff, which Fourth-Party Defendant denies, were caused by the acts, errors or omissions of Fourth-Party Plaintiff's subcontractors for the Project.

**As and For a Eleventh Affirmative Defense**

31. Subcontractor Plaintiffs' claims should be offset by any sums of money paid or to be paid by Fourth-Party Defendant to other persons and entities as a result of Subcontractor Plaintiffs' defective and negligent work, labor and services.

**As and For a Twelfth Affirmative Defense**

32. The Plaintiff Parties' claims should be offset by any sums of money paid or to be paid to Plaintiff Parties by Fourth-Party Defendant and/or DDC on account of the Project.

**As and For a Thirteenth Affirmative Defense**

33. Fourth-Party Defendant at all times properly received, handled and disbursed or deposited all sums received by it in connection with the Project.

**As and For a Fourteenth Affirmative Defense**

34. Plaintiff Parties failed to name necessary parties as defendants in this lawsuit and, as a result thereof, the Fourth-Party Complaint should be dismissed.

**As and For a Fifteenth Affirmative Defense**

35. Fourth-Party Plaintiff's Complaint is barred by the alternate dispute resolution clause incorporated into the DDC/Hill Contract and/or the Hill/Beys Contract.

**As and For a Sixteenth Affirmative Defense**

36. The Fourth-Party Complaint fails to state a cause of action for common law indemnification.

**As and For a Seventeenth Affirmative Defense**

37. Plaintiff Parties' lack standing to bring this action.

**As and For a Eighteenth Affirmative Defense**

38. Plaintiff Parties' claims are barred by the doctrine of unclean hands.

**As and For a Nineteenth Affirmative Defense**

39. Plaintiff Parties' claims are barred by the applicable statute of limitations.

**As and For a Twentieth Affirmative Defense**

40. Plaintiff Parties' claims are barred due to Plaintiff Parties' failure to adhere to the terms of the Contract Documents and Plaintiff Parties' breach of contract.

**As and For a Twenty-First Affirmative Defense**

41. The Fourth-Party Complaint is barred by the doctrines of waiver, laches, unclean hands and/or estoppel.

**As and For a Twenty-Second Affirmative Defense**

42. The Fourth-Party Plaintiff failed to comply with the terms of the Hill/Beys Contract.

**As and For a Twenty-Third Affirmative Defense**

43. Subcontractor Plaintiffs' respective Complaints must be dismissed for breach of contract.

**As and For a Twenty-Fourth Affirmative Defense**

44. Fourth-Party Plaintiff's claims are barred as the Beys/IWC Subcontract failed to comply with the necessary subcontract requirements as articulated in Article 10 of the DDC/Hill Contract.

**As and For a Twenty-Fifth Affirmative Defense**

45. The Fourth-Party Complaint is barred by the doctrine of judicial estoppel.

**As and For a Twenty-Sixth Affirmative Defense**

46. The Fourth-Party Plaintiff's claims are barred as Fourth-Party Plaintiff failed to pay, and currently owes Plaintiff a balance allegedly due, pursuant to the Beys/IWC Subcontract.

**As and For a Twenty-Seventh Affirmative Defense**

47. The Subcontractor Plaintiffs' claims are barred as the Subcontract Plaintiffs have failed to comply with the change order requirements articulated in Articles 10 and 11 of the DDC/Hill Contract.

**As and For a Twenty-Eighth Affirmative Defense**

48. Plaintiff's Complaint is barred by the alternate dispute resolution clause incorporated into the Contract Documents.

**As and For a Twenty-Ninth Affirmative Defense**

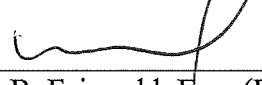
49. The Subcontractor Plaintiffs' claims are barred pursuant to Article 26 of the DDC/Hill Contract.

**WHEREFORE**, Fourth-Party Defendant Hill International, Inc. demands judgment in its favor as follows:

- (A) Dismissing Fourth-Party Plaintiff's Fourth-Party Complaint in its entirety;
- (B) Awarding it the costs and disbursements of this action; and
- (B) Such other, further and different relief as the Court may deem just and proper together with the costs and disbursements of this action.

Dated: New York, New York  
August 4, 2008

LePatner & Associates LLP  
Attorneys for Fourth-Party  
Defendant Hill International, Inc.  
600 Lexington Avenue, 21<sup>st</sup> Floor  
New York, New York 10022  
(212) 935-4400

By:   
Ronald B. Feingold, Esq. (RBF 6315)

To: Milber Makris Plousadis &  
Seiden, LLP  
Attorneys for Fourth-Party Plaintiff  
Beys General Construction Corp.  
1000 Woodbury Road, Suit 402  
Woodbury, New York 11797  
(516) 712-4000

Milber Makris Plousadis &  
Seiden, LLP  
Attorneys for Defendant  
and Third-Party Plaintiff  
Federal Insurance Company  
1000 Woodbury Road, Suit 402  
Woodbury, New York 11797  
(516) 712-4000

Welby, Brady & Greenblatt, LLP  
Attorneys for Plaintiff  
Industrial Window Corp.  
11 Martine Avenue, 15<sup>th</sup> Floor  
White Plains, New York 10606  
(914) 428-2100